

Draft Ventura County Municipal Permit -- The Municipal Impact

A Presentation to the Los Angeles Regional Water Quality
Control Board

By

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on behalf of the

Coalition for Practical Regulation

Burbank, CA

05 April 2007

CPR's Interest in the Ventura Permit

- Our cities are very interested in the Draft Ventura Permit because we see it as a potential model for our next permit or permits.
- As a councilmember, I must assure my constituents that I am spending the public's monies wisely.
- The current Draft Permit would be prohibitively expensive to implement and will expose cities to third-party litigation.
- The California Constitution recognizes the countless services a city must provide its citizens, and the strain on local funds from the numerous public programs to be conducted by cities.

Unfunded Mandates Jeopardize Cities' Ability to Provide Essential Services

- Police and fire protection, ambulance and paramedic services, and public libraries and parks all compete for the same General Fund monies used by water quality programs.
- The California Constitution prevents State entities, including the State and Regional Boards, from imposing additional obligations on municipalities without first providing a funding mechanism or funds to address the mandates. In other words, the State may not impose unfunded mandates.
- The Draft Ventura Permit recognizes the need for funds to meet Permit requirements, but does not provide a funding mechanism. It instead asserts that cities must find the money themselves.

Non-Federally Required Elements of the Draft Permit Should Not Be Imposed Upon Cities Until Appropriate Funding Has Been Provided

- We recognize that a Permit is required by the federal Clean Water Act, but a number of expensive program requirements contained in the Draft Permit are not federal requirements.
- The Municipal Action Levels (MALs) are not required by federal law and will cost millions, if not billions, of public dollars for compliance.
- Additional expensive provisions in the Draft Permit that are not required by federal law, include: (1) provisions under Parts 1 and 2 requiring strict compliance with water quality standards; (2) TMDL provisions requiring strict compliance with numeric waste load allocations; (3) Permit terms obligating cities to effectively be responsible for atmospheric deposition; and (4) programs such as the Industrial Facility Inspection Program, the Pesticide Program, the Watershed Ecological Restoration Program, the SUSMP requirements, and the Low Impact Development requirements.

Non-Federally Required Elements of the Draft Permit Should Not Be Imposed Upon Cities Until Appropriate Funding Has Been Provided (Continued)

- The Fiscal Resources Section should be modified to require cities to implement the non-required programs only after sufficient funds have been allocated by the State and made available to the cities so as to not diminish funds that are to be available for other important public services.
- The statement in Part 3.C.1 that states, “The Permittees shall allocate all necessary funds to implement the activities required to comply with the provisions of this Order,” should be removed from the permit.

Major Policy Issues with the Ventura Permit

A presentation to the Los Angeles Regional Water
Quality Control Board

By

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Coalition for Practical Regulation

Burbank, CA

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Municipal Action Levels (MALs) and Numeric Effluent Limits (NELs)

- The proposal in the Draft Ventura Permit to establish municipal action levels (MALs) as statistically derived numeric effluent limits (NELs) is inconsistent with the iterative process in State Water Board Order 99-05.
- The proposed use of MALs is contrary to the findings of the State Water Board's Blue Ribbon Panel that found that "It is not feasible at this time to set enforceable numeric criteria for municipal BMPs and in particular urban discharges."

The Draft Ventura Permit Proposes Inappropriate and Wrongly Applied Action Levels

- The municipal action levels in the Draft Permit are based on nationwide monitoring data.
- Action levels should be based on watershed-specific or even waterbody-specific data that reflect natural background and local conditions.
- The municipal action levels, as proposed, are really numeric effluent limits that trigger permit violations and enforcement.
- Action levels should only be used as triggers for the application of enhanced management measures as part of the iterative process.

We Need a Good Working Definition of Maximum Extent Practicable

- The draft Ventura Permit operationally defines MEP on the basis of exceedances of Municipal Action Levels derived from nationwide monitoring data. This ignores the need to comply with the provisions under the Porter-Cologne Act and ignores local factors and characteristics.
- MEP is a general guideline, and the Permittees believe it should be applied consistent with the factors set forth in the Porter-Cologne Act, including only imposing requirements “that could reasonably be achieved.”
- In the absence of a statewide definition, this Regional Board could take the lead in developing a good working definition of MEP.

The Draft Ventura Permit's Definition of MEP (Maximum Extent Practicable)

- The Draft Ventura Permit has a short definition of MEP referring to the Clean Water Act, State Board Order no. 2000-11, and the Browner Decision:

“Maximum Extent Practicable (MEP) - means the standard for implementation of storm water municipal programs to reduce pollutants in storm water. CWA Section 402(p)(3)(B)(iii) requires that municipal permits ‘shall require controls to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and system, design, and engineering methods, and such other provisions as the Administrator or the State determines appropriate for the control of such pollutants.’”
- In year three after permit adoption, two or more exceedances of a MAL will be considered a violation of the MEP provisions of the Order, regardless of whether or not the cities have taken action in accordance with the maximum extent practicable standard or whether the MALs “could reasonably be achieved”.

The New San Diego Permit's Definition of MEP (Maximum Extent Practicable)

- The San Diego Permit contains a long definition of MEP that is partly based on the 1993 Elizabeth Jennings memo defining MEP. The Permit says, in part:

“MEP generally emphasizes pollution prevention and source control BMPs primarily (as the first line of defense)...MEP considers economics and is generally, but not necessarily, less stringent than BAT. A definition for MEP is not provided either in the statute or in the regulations. Instead the definition of MEP is dynamic and will be defined by the following process over time: municipalities propose their definition of MEP by way of their urban runoff management programs. Their total collective and individual activities conducted pursuant to the urban runoff management programs becomes their proposal for MEP as it applies both to their overall effort, as well as to specific activities...In the absence of a proposal acceptable to the Regional Board, the Regional Board defines MEP.”

The New San Diego Permit's Definition of MEP (Maximum Extent Practicable) (Continued)

- The San Diego Permit goes on to note that useful factors to consider in selecting BMPs to achieve the MEP standard include effectiveness, regulatory compliance, public acceptance, cost, and technical feasibility. (From 1993 memo entitled “Definition of Maximum Extent Practicable” by Elizabeth Jennings, Senior Staff Counsel, SWRCB.)
- The Regional Board or the State Board has the final determination as to whether a municipality has reduced pollutants to the MEP, but copermitees have the opportunity to propose their own definition as applied to their overall efforts and to specific activities.

SB 1342 (2002) Proposed Definition of MEP

Section 2(b):

The “maximum extent practicable” standard means the maximum degree of pollutant reduction achievable through the application of practical, technologically feasible, and economically achievable best management practices, including but not limited to, pollution control techniques and system design and engineering methods.

SB 1342 (2002) Definition of Technologically Feasible and Economically Achievable BMPs

Technologically feasible and economically achievable best management practices are those practices that satisfy all of the following criteria :

- (1) Demonstrate effectiveness in removing pollutants of concern.
- (2) Demonstrate compliance with subsection (p) of Section 1342 of Title 33 of the United States Code.
- (3) Demonstrate the support and acceptance of the public served by those best management practices.
- (4) Demonstrate a reasonable relationship between the cost of the best management practice and the pollution control result to be achieved.
- (5) Demonstrate technological feasibility to effect the intended pollutant removals, considering soils, geography, topography, water resources, and such other limiting physical conditions as may exist.
- (6) Demonstrate economical achievability through the identification of available funding sources or through a proposed funding plan, or both, considering the need for the continuation of existing municipal services and the application of legal restrictions for approval of new sources of funding consistent with the state law and federal regulatory requirements prescribed under subsection (d) of Part 122.26 of Title 40 of the Code of Federal Regulations.

Recommendations

- Direct staff to only use municipal action levels (MALs) as triggers for the application of enhanced management measures.
- Direct staff to work with interested parties to develop a draft statewide framework for determining maximum extent practicable.

Permit Implementation

A presentation to the Los Angeles Regional Water Quality
Control Board

By

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City of Downey
on behalf of the
Coalition for Practical Regulation

Burbank, CA
05 April 2007

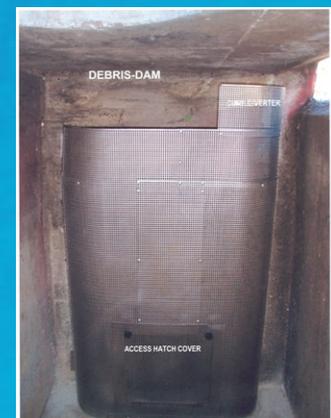
General Questions about Municipal Permit Implementation

- In a May 10, 2000 letter from the California Business, Transportation, and Housing Agency to Cal EPA, Secretary Contreras-Sweet noted to Secretary Hickox that:
 - “Failure to comply with the Clean Water Act exposes California’s municipalities and Caltrans to regulatory action and fines and third-party lawsuits...Full compliance in the near term may not be technically or economically feasible for Caltrans or any municipality.”
- This letter further raises several broad policy questions:
 - “- What strategies should local agencies and state agencies who discharge storm water, and state and federal agencies who enforce the Clean Water Act, follow in achieving compliance with water quality standards and objectives, and permit requirements?”
 - How can implementation of state and federal clean water laws avoid becoming a watershed of litigation and enforcement activity?
 - What is the best way for Californians to pay for these water quality investments? How can these needed investments be balanced with other community needs?”

General Questions about Municipal Permit Implementation (Continued)

What approaches should we collectively be following?

- What is the best way to implement needed water quality improvements while balancing the many services that Californians demand?
- What strategy do we follow to avoid further litigation?
- These fundamental questions remain for the most part unanswered seven years later.



TMDL Implementation Should Be Separated from Permit Implementation

- Current MS4 Permits are already unwieldy and cumbersome.
- Finding E6 ties the Draft Permit to the 1999 Consent Decree between USEPA, NRDC, HTB, & SMBK.
- The Draft Ventura Permit states that the TMDL waste load allocations are to be expressed as wet weather numeric limits and prohibitions against all dry-weather discharges.
- Permittees are to implement “all control measures” to achieve TMDL waste load allocations by the effective dates.
- The TMDL Consent Decree doesn't require implementation or enforcement of TMDLs through NPDES Permits.
- The Clean Water Act gives great flexibility to the States in implementing and enforcing TMDLs.

TMDLs Should Be Implemented Through MOUs

- USEPA stated that TMDLs can be implemented through a variety of voluntary agreement mechanisms (e.g. MOUs).
- Cities are rightfully concerned that implementing and enforcing the TMDLs through waste load allocations and receiving waters prohibitions in the NPDES permit will result in daily fines of \$31,500 and in third-party litigation.
 - Recent “differing” interpretation of SUSMP and infiltration
- Implementation of the TMDL program is in its infancy and that there is still much experimentation necessary in the construction and operation of capital improvements and in devising source control programs. It is too early to subject local government to third-party litigation for investing in the iterative process.



TMDLs Should Be Implemented Through MOUs (Continued)

- MOUs should be the preferred TMDL implementation strategy.
 - MOUs can set forth BMPs to be implemented by the cities.
 - MOUs allow Board enforcement through Supplemental Environmental Programs (SEPs) that consist of programs designed to enhance water quality.
 - MOUs can give the Board adequate enforcement power.
- We request that Finding E6 of the Draft Permit be revised to specify that implementation of the TMDL program will be through MOUs between the Regional Boards and local governments rather than through the Permit.



Atmospheric Deposition and Its Role in the Permitting Process

Presented by
Lisa Rapp
Director of Public Works,
City of Lakewood

Los Angeles Regional Water Quality Control Board
April 5, 2007
Burbank, CA

Atmospheric Deposition and Water Quality

- There is increasing recognition of the connection between atmospheric deposition and water quality.
- Multi-media problems demand multi-agency planning and policy coordination.
- CARB and the State Water Board had an historic joint workshop in February 2006.

Atmospheric Deposition and Water Quality (Continued)

- The State Board has acknowledged the importance of atmospheric deposition in meeting water quality objectives.
 - “We will not be able to fully address these impaired water bodies until the component of atmospheric deposition is understood and quantified.”
 - “As was made apparent by our atmospheric deposition workshop, U.S. EPA’s air regulation structure needs to include atmospheric deposition’s known impact on water quality.”

Source: April 14, 2006 letter from Celeste Cantú,

Former Executive Director, State Water Resources Control Board to U.S. EPA

NRDC Pushing for Action on the Air-Water Interface

- NRDC petitioned the Los Angeles Regional Board to request technical information from industrial aerial emission sources.
- NRDC says that failure to issue 13267 letters by 15 May 2007 will be considered a “failure to act” under CWC Section 13320(a) for purposes of appeal to the State Water Board.
- NRDC gathered data on emissions of six chemical and metal pollutants in 303(d) listed waterbodies from EPA’s Toxic Release Inventory.
- NRDC requested that 13267 letters be sent to the top 10 dischargers of each of the selected constituents.
- NRDC cited scientific studies illustrating the problems of atmospheric deposition in the Region's waterbodies.

Water Pollutants Identified as Significant for Atmospheric Deposition in at Least One Location

- Sulfur compounds
- Nitrogen compounds
- Mercury compounds
- Lead compounds
- Cadmium compounds
- Chlorpyrifos
- Copper
- Zinc
- Polychlorinated biphenols (PCBs)
- Diazinon
- Dioxins/furans
- Dieldrin
- DDT/DDE
- Hexachlorobenzene (HC3)
- α -hexachlorocyclohexane (α -HCH)
- Lindane
- Toxaphene
- Polycyclic organic matter (POM), incl. polycyclic aromatic hydrocarbons (PAHs)
- Atrazine

Source: USEPA, *Frequently Asked Questions About Atmospheric Deposition, A Handbook for Watershed Managers*, Sept. 2001.

Local Governments Understand the Importance of the Air-Water Interface

- Permittees in the Los Angeles River Watershed are developing an atmospheric deposition research project related to the Los Angeles River Metals TMDL.
- The two-year project involves paired measurements of atmospheric deposition and storm flow.
- It is estimated that local governments will be contributing approximately \$1.5 million to fund this atmospheric deposition research project.

Storm Water Permittees Caught in a Regulatory/Authority Bind

- The combination of directly connected impervious areas and atmospheric deposition of pollutants produces a “perfect storm” impacting water quality control.
- Removing all pollutants at the end of storm drains would be very expensive - many, many billions of dollars.
- The regulatory reality is that water boards can regulate permittees but don't have regulatory control over some of the major pollutant sources such as the sources of atmospheric deposition.

The Water Boards and the Regulated Community Need Help from the Air Boards

- While water quality regulations have been broadening, air quality regulation has become more focused.
- Air quality regulation is increasingly focused on fine, breathable particles, but air deposition impacts on water quality involve both fine particles and coarse particles.
- Water quality practitioners need help from the Air Boards to monitor a wider range of particle sizes.
- The Air Boards need to acknowledge that water pollution is one of the public welfare effects that need to be addressed in regulating sources of atmospheric pollution.

Atmospheric Deposition Is Not Adequately Addressed in the Draft Ventura Permit

- Finding B.16 is a good start; it recognizes the importance of dry indirect deposition to water quality.
- Finding B.16 also indicates that the Regional Board will cooperate with the South Coast AQMD and CARB. Municipalities would like to work with the Regional Board to develop a strategy to stimulate more action by the air boards.
- Neither the Regional Board nor municipalities can control atmospheric deposition, and we won't be able to achieve clean water until it is controlled.

Policy & Implementation Concerns: Atmospheric Deposition Is Not Adequately Addressed in the Ventura Permit (Continued)

- The Santa Ana Regional Board recognizes that permittees can't control atmospheric deposition and other specified discharges:
 16. The permittees may lack legal jurisdiction over storm water discharges into their systems from some State and Federal facilities, utilities and special districts, Native American tribal lands, waste water management agencies and other point and non-point source discharges otherwise permitted by the Regional Board. The Regional Board recognizes that the permittees should not be held responsible for such facilities and/or discharges. Similarly, certain activities that generate pollutants present in storm water runoff may be beyond the ability of the permittees to eliminate. Examples of these include operation of internal combustion engines, atmospheric deposition, brake pad wear, tire wear and leaching of naturally occurring minerals from local geography.

(From Santa Ana Board Order No. R8-2002-0010 - Waste Discharge Requirements for the County of Orange, Orange County Flood Control District and The Incorporated Cities of Orange County Within the Santa Ana Region Areawide Urban Storm Water Runoff Orange County)

- We ask that you include a similar finding in the Ventura Permit and the other MS4 permits you will issue later.

Environmental Impact Issues Associated with Infiltration

Presented by
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TECS Environmental
on behalf of
The Coalition for Practical Regulation

Los Angeles Regional Water Quality Control Board
April 5, 2007
Burbank, CA

Draft Permit Requires Thorough Environmental Impact Analysis

- A CEQA clearance or other mechanism is needed to evaluate the impact of the next MS4 Permit in terms of:
 - Potential adverse impact on other Permittee programs and services resulting from excessive compliance costs associated with this MS4 Permit; and
 - Potential adverse environmental impacts resulting from required SUSMP provisions (e.g., impact of infiltration on groundwater quality).

Draft Permit Requires Thorough Environmental Impact Analysis (Continued)

- Draft MS4 proposes mandatory infiltration (through the 95% perviousness requirement)
- Infiltration cannot be mandatory because of infeasibility, such as:
 - Property line to line projects where there is no area to infiltrate
 - Projects that are situated in known areas of contamination (areas in the San Gabriel Valley)
 - Project sites where there is the possibility that an accidental release of caustic pollutants could enter the sub-surface and threaten groundwater (automotive repair shops, gas stations, landfills, airports, certain categories of industrial facilities)
 - Areas where the water table is high (City of Cerritos will attest to this during public comment period)
 - Public and private streets

Draft Permit Requires Thorough Environmental Impact Analysis (Continued)

- Need to evaluate appropriateness of infiltration controls within the context of specific types of projects and site conditions
- Need to consider feasible alternatives and mitigation measures
- Appropriate environmental evaluation will greatly improve permit implementation by:
 - Taking the guess work out of the process;
 - Better improving water quality; and
 - Reducing if not eliminating the need for litigation.